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Attorney for Movant

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

JAMES L. MACKLIN
 	
        Debtor(s)
_____
DEUTSCHE BANK NATIONAL TRUST COMPANY
 	
        Movant,
vs.
 	
JAMES L. MACKLIN, Debtor, and Thomas A. Aceituno, Trustee,
 	
       Respondents.
_____
	Chapter: 7 (Converted from Ch. 13)
	
	Case No.: SAC-10-44610-RS
	
	Docket Control No. DJB-002
	
	MOTION FOR RELIEF FROM AUTOMATIC STAY (UNLAWFUL DETAINER)
	
	DATE: DECEMBER 9TH, 2010
	TIME: 9:30 A.M.
	CTRM: E-33
	ADDR: 501 I ST, SACRAMENTO, CA
	JUDGE: RONALD H. SARGIS

    DEUTSCHE BANK NATIONAL TRUST COMPANY ("Movant") requests an order of the court granting relief from the stay under 11 U.S.C. §362(a). The Court has jurisdiction over this matter pursuant to 28 U.S.C. §157 and §1334. This motion is brought for cause under §362(d)(1).

    Movant is the legal owner of real property commonly known as 10040 WISE RD, AUBURN, CA 95603 (the "Property").   Movant acquired title to the Property at a foreclosure sale held on 12/14/2009**,** and perfected title to the Property in accordance with California law (a certified copy of the recorded Trustee's Deed Upon Sale is attached as **Exhibit "A"**). A Notice to Vacate was posted on the Property on 01/13/2010, and the notice periods under applicable law expired thereunder (a true

and correct copy of the Notice to Vacate and proof of service is attached as **Exhibit "B"** hereto). After the notice period expired, a Complaint for Unlawful Detainer was filed in state court on 03/26/2010 (a true and correct copy of the Complaint is attached as **Exhibit "C"** hereto).   The Debtor filed the within Bankruptcy case on 09/16/2010.   Movant seeks relief from stay to finalize its Unlawful Detainer proceedings and to obtain possession of the Property.

I.

CAUSE EXISTS FOR RELIEF FROM STAY

Pursuant to 11 U.S.C. §362(c), the automatic stay applies only to property of the Estate, which is defined by 11 U.S.C. §541(a)(1) as ". . . all legal or equitable interests of the debtor in property as of the commencement of the case" (emphasis added).   The Property was sold at a foreclosure sale held on 12/14/2009, a Notice to Vacate as posted on the Property on 01/13/2010, and the notice periods under applicable law expired, all prior to the filing of this Bankruptcy case. Accordingly, the Debtor's legal and equitable rights to occupy the Property had already been terminated **as of the Petition date**, the Property does not constitute a portion of Debtor's Bankruptcy Estate, and no Stay is applicable with respect thereto.

WHEREFORE, Movant requests an order of the Court as follows:

1. For relief from the automatic stay imposed by 11 U.S.C. §362(a) with respect to the real property at 10040 WISE RD, AUBURN, CA 95603.

2. That Movant may proceed with all available State law remedies to recover possession of the Property, including without limitation the commencement and/or continuation of unlawful detainer proceedings, and the disposal of any personal property remaining in the Property in accordance with California law, and the Sheriff is authorized to evict the Debtor and all other occupants from the Property, without further notice, hearing, or court order.

3. That the waiting period under Bankruptcy Rule 4001(a)(3) is waived.

4. That the Order be binding in any pending and subsequent Bankruptcy cases filed by

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1 Debtor(s), or either of them, and any other occupant of the Property, irrespective of the Chapter

2 and/or any conversion thereof.

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5 DATED: November 12th, 2010   ROBERT J. JACKSON & ASSOCIATES, INC.

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7   By: /s/ David J. Boyer   .
                                            David J. Boyer, Esq.
8   Attorney for Movant

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FARFS679 EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION